

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY HOLLAND,)
)
Plaintiff,)
)
-vs-) No. 19-CV-663-JFH-JFJ
)
TURN KEY CLINICS, LLC, et al.,)
)
Defendant(s).)

TRANSCRIPT OF TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE JODI F. JAYNE

UNITED STATES MAGISTRATE JUDGE

DECEMBER 3, 2020

REPORTED BY: *BRIAN P. NEIL, RMR-CRR*
United States Court Reporter

1 A P P E A R A N C E S
2

3 John S. Bryan, Attorney at Law, Bryan & Terrell Law,
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attorney on behalf of the Plaintiff;

5 Paulina Thompson, Attorney at Law, Johnson, Hanan &
6 Vosler, 9801 North Broadway Ext., Oklahoma City, Oklahoma,
73114, attorney on behalf of Defendant Turn Key;

7 Michael L. Carr, Attorney at Law, Collins, Zorn &
8 Wagner, 429 N.E. 50th Street, 2nd Floor, Oklahoma City,
Oklahoma, 73105, attorney on behalf of Defendant Creek County;

9 Elise M. Horne, Attorney at Law, Goolsby, Proctor,
10 Heffner & Gibbs, 701 North Broadway Avenue, Suite 400, Oklahoma
City, Oklahoma, 73102, attorney on behalf of Defendant Lance
Prout.

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Thursday, December 3, 2020

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DEPUTY COURT CLERK: This is Larry Holland v. Turn
Key Health Clinics, LLC, et al., Case No. CV-19-663-JFH-JFJ.
Counsel, please enter your appearances.

MR. BRYAN: Spencer Bryan on behalf of plaintiff.

MS. THOMPSON: Paulina Thompson for Turn Key Health Clinics, LLC, defendant.

MR. CARR: This is Mike Carr for Defendant Board of County Commissioners of Creek County, the Creek County Public Facilities Authority, Fred Clark, Joe Thompson, and Brett Bowling.

THE COURT: All right.

MS. HORNE: Elise Horne for Defendant Prout. Sorry,
Judge. Elise Horne for Lance Prout.

THE COURT: Thank you. I'm sorry I cut you off. Is there anyone else?

MR. BRYAN: No, Your Honor.

THE COURT: All right. Good morning, everyone. I want to start by saying that I regret having to strike the last hearing at the last minute. I was asked to cover criminal that day and I just couldn't fit it all in so I got this reset as soon as I could.

I have reviewed all the briefs on both the motions that we're addressing here today. I'm not going to need a whole lot

1 of argument. I'm basically just going to launch into my
2 rulings, and then if I have questions as to a particular
3 request, I will ask them as I go along. I'm going to start
4 with plaintiff's third motion to compel discovery, which is
5 docket 88. Some of my rulings are going to be specific as to
6 the language of those so I'd like you to have them in front of
7 you. I'm tracking along in the plaintiff's third motion to
8 compel, starting on page 5, with interrogatory 2.

9 Interrogatory 2, identity of witnesses, is going to be
10 granted in part. I'm omitting the language "or whom you
11 believe may have knowledge." I'm omitting the language on the
12 next line "or any fact underlying the subject matter of this
13 action." And I'm omitting the language in the last -- the next
14 to last sentence "that you believe." I think those phrases are
15 overly broad and make that too vague.

16 Defendant need only respond to this interrogatory with
17 people it knows have knowledge or claim to have knowledge of
18 the facts alleged in the complaint -- or I guess it's actually
19 an amended petition here. If there are no corporate employees
20 with personal knowledge of the events and only corporate
21 employees who might testify as a 30(b)(6) witness, then those
22 need not be included in this response.

23 The current reference to medical records is
24 insufficient, and defendant is going to be ordered to list out
25 individuals who interacted with Floyd but not in this broad

1 manner that plaintiff requested.

2 Are there any questions about that ruling as to
3 interrogatory 2?

4 MS. THOMPSON: Your Honor, as to interrogatory 2,
5 defendant had previously supplemented its response and listed
6 all of the individuals who were involved in the care of the
7 decedent, Floyd Holland, and that information was provided to
8 plaintiff almost two years ago. And just to confirm, the court
9 has ordered to only list those individuals with personal
10 knowledge of the events at issue; is that correct?

11 THE COURT: That's correct. And I wasn't aware of
12 that supplement. I apologize for that. Was that in your
13 response brief?

14 MS. THOMPSON: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. BRYAN: Your Honor, if I -- can I respond to
17 that just briefly.

18 THE COURT: Of course you can, yep.

19 MR. BRYAN: That was just in a letter. I never
20 received a verified supplemental response.

21 THE COURT: That's what I thought. I mean, I did
22 see that letter that supplemented in that manner, but I am
23 ruling that that needs to be in a supplemental verified
24 response. But I do think that list that you provided so far is
25 sufficient.

1 Anything further --

2 MS. THOMPSON: Your Honor?

3 THE COURT: Yes.

4 MS. THOMPSON: Yes. We have provided that
5 supplemental response in a letter and verification of that
6 response was subsequently provided recently to the plaintiff.

7 THE COURT: Okay. Mr. Bryan, what else do you need
8 on this?

9 MR. BRYAN: Nothing further, Your Honor. I'm ready
10 to proceed with the next one.

11 THE COURT: Okay. As I go through here, if there's
12 something that's really adequately been resolved, feel free to
13 stop me.

14 All right. Interrogatory No. 6, is there anything I
15 need to know about how this has been supplemented or resolved
16 before I rule?

17 MR. BRYAN: Nothing from the plaintiff, Your Honor.

18 THE COURT: Ms. Thompson?

19 MS. THOMPSON: Nothing, Your Honor.

20 THE COURT: All right.

21 MS. THOMPSON: Nothing, Your Honor, at this time.

22 THE COURT: Thank you. Okay. Interrogatory 6 is
23 going to be granted in part. The court finds four years to be
24 an overly broad time frame and finds two years prior to the
25 incident to be appropriate so the request is granted for the

1 years 2016 and 2017. I am not going to place any geographic
2 limits on this request. I find lawsuits in other jurisdictions
3 could be relevant -- or are relevant to the issues of notice
4 and *Moneill* / liability. I've looked at this and I think the onus
5 of finding factually relevant cases remains on plaintiff, and I
6 think this is a fair allocation of burden regarding
7 identification of other relevant lawsuits in the two years
8 preceding the incident.

9 Interrogatory No. 6 --

10 MS. THOMPSON: Your Honor?

11 THE COURT: Yes, Ms. Thompson.

12 MS. THOMPSON: If I may make a comment with regard
13 to interrogatory No. 6?

14 THE COURT: You may.

15 MS. THOMPSON: Turn Key has locations in multiple
16 states, not just Oklahoma, of different sizes and different
17 needs. Is the court's decision covering the entire United
18 States or just the state of Oklahoma? Because Turn Key's
19 position is that the entire United States is too broad of a
20 geographic limit and too burdensome on Turn Key to search
21 through all those jurisdictions to find any relevant cases to
22 provide to -- what it intends to provide to plaintiff --

23 THE COURT: Why is that --

24 MS. THOMPSON: -- that would be pertaining to
25 Oklahoma only.

1 THE COURT: Tell me why that's overly burdensome and
2 tell me why it's not relevant. Are you making a relevancy
3 argument or burden only?

4 MS. THOMPSON: Well, Your Honor, I'm making both
5 arguments. With regard to the relevancy argument, in different
6 jurisdictions and different locations the requirement and the
7 policies and the procedures and the requirements pursuant to
8 the contract with the entities in those jurisdictions may be
9 different and may not directly relate to the issue in this
10 case.

11 In addition, searching through all its prior cases for
12 a period of two years in all of those jurisdictions and all of
13 those different states -- and Turn Key is expanding from those
14 locations in multiple states now and it would be unduly
15 burdensome to ask Turn Key to search through all of those
16 records when they're publicly available to view -- most of
17 those records should be publicly available unless were filed
18 and then withdrawn or some sort of an incident that does not
19 allow for a lawsuit, which would be equally difficult for Turn
20 Key to surmise --

21 THE COURT: How many states? Ms. Thompson, I'm
22 going to interrupt you. How many states?

23 MS. THOMPSON: I believe currently it is seven
24 states. I would have to confirm that by checking my records.
25 But there is Oklahoma, Arkansas, Louisiana, Texas, Kansas, I

1 believe Colorado. I cannot think of another state at the
2 moment.

3 THE COURT: Okay. My ruling's going to stand both
4 as to relevance and as to burden. I don't think searching
5 through lawsuits against Turn Key in a seven-state area for a
6 period of two years is unduly burdensome. I would also note
7 that defendant hasn't provided any specific evidence of how
8 long this would take or the type of burden that it would
9 impose. Even if they did, as I said, I've thought hard about
10 whether that's a fair allocation of work as to past lawsuits
11 and I do think that's fair. Plaintiff's going to have to do
12 the majority of the work of going through these to try to see
13 if there's anything relevant. Identifying them by name, case
14 number, and court is not overly burdensome for a two-year
15 period and very likely to lead to relevant information.

16 I also don't think the fact that something happened out
17 of state, I accept plaintiff's argument in his briefs that can
18 still be relevant. Knowledge of an unconstitutional practice
19 through tortious acts in other states can still create the
20 subjective awareness of a substantial risk of serious harm. So
21 I understand your arguments and those will be rejected.

22 Interrogatory No. 7 --

23 MS. THOMPSON: Your Honor?

24 THE COURT: Yes, Ms. Thompson.

25 MS. THOMPSON: If I -- I apologize for interrupting

1 you.

2 THE COURT: That's okay.

3 MS. THOMPSON: But would this ruling be limited to
4 lawsuits filed, lawsuits only, or --

5 THE COURT: Yes.

6 MS. THOMPSON: To clarify, yes --

7 THE COURT: I view that as -- sorry. If you have a
8 name -- I'm so sorry, Ms. Thompson. I talked right over you.
9 That was my fault. But if you have a name, case number, and
10 court, I perceive that request to be filed lawsuits only.

11 Mr. Bryan, is that your intent?

12 MR. BRYAN: Yes, Your Honor.

13 THE COURT: All right. Does that answer your
14 question, Ms. Thompson?

15 MS. THOMPSON: Yes, Your Honor.

16 THE COURT: Thank you.

17 Okay. Interrogatory No. 7, encounters with decedent,
18 has there been any supplement or further resolution of this
19 interrogatory that I need to know about, Ms. Thompson?

20 MS. THOMPSON: No, Your Honor. This interrogatory
21 is too vague and I believe that Turn Key has appropriately
22 objected to this interrogatory as "encounter" is not identified
23 specifically and we have not received any further clarification
24 from the plaintiff as to what "encounter" means. Is that
25 passing the plaintiff in the hall? Which would be almost

1 impossible to narrow down. Was it another lawsuit involving a
2 plaintiff? Just not clear on what plaintiff is looking for
3 there.

4 THE COURT: Mr. Bryan, I'm going to let you respond
5 to that with what you're looking for with respect to the word
6 "encounter."

7 MR. BRYAN: Your Honor, it would be just the content
8 used in the phrase. If there's some type of engagement between
9 Mr. Floyd -- or Mr. Holland and one of their agents, I would
10 like to know that.

11 MS. THOMPSON: Our response to that, Your Honor,
12 was -- our actual response to this in our interrogatory is that
13 any encounters with respect to treatment or care of Mr. Floyd
14 are documented in the medical records, and anything that may
15 not be documented with regard to care and treatment would be
16 personal knowledge of each individual treating provider and
17 that would be able to be discovered in depositions of those
18 individual treatment providers.

19 THE COURT: Okay. I find that this -- so,
20 Ms. Thompson, have you provided -- you provided reference to
21 the medical records under Rule 33(d); is that right?

22 MS. THOMPSON: Yes, correct. And further clarify
23 that anything that the individual providers may remember in
24 addition to what's documented in the medical records from their
25 personal recollections with interaction with Mr. Holland,

1 plaintiff is welcome to discover that additional information by
2 depositing those providers directly which plaintiff has not
3 performed.

4 THE COURT: Okay. Interrogatory 7 will be denied.
5 I agree with Ms. Thompson that the court -- the defendants'
6 reference to medical records under Rule 33(d) is sufficient for
7 purposes of identification and description of any encounters as
8 to treatment and care, which are the encounters that I find
9 relevant in this case. I think plaintiff's request would
10 require Turn Key to essentially nail down the testimony of
11 every medical provider regarding the encounter and try to put
12 that in writing in an interrogatory and I find that overly
13 burdensome for purposes of written discovery.

14 I will say that, Ms. Thompson, if you're aware of other
15 encounters as to treatment and care that are not in the medical
16 records provided, you must respond in narrative form for those.

17 MS. THOMPSON: Yes, Your Honor. If Turn Key becomes
18 aware of anything else responsive in that regard, we will
19 supplement.

20 THE COURT: Okay. And I do expect there to be some
21 inquiry of employees on duty during the relevant time frames
22 with respect to that. But other than that, everything that
23 you've done so far with respect to identifying the medical
24 records is adequate. This relates to, I think, request for
25 admission 7 as well so we'll come back to that at that time.

1 Any questions on the ruling on interrogatory 7,

2 Mr. Bryan?

3 MR. BRYAN: Nothing from the plaintiff, Your Honor.

4 THE COURT: All right. Ms. Thompson?

5 MS. THOMPSON: Nothing further from defendant.

6 THE COURT: Okay. Moving on to request for
7 production 2, this request will be granted but only to the
8 extent that defendant knows what documents it's going to use at
9 this point. This need not be a comprehensive exhibit list.
10 Any documents known to Turn Key for use in the litigation must
11 be produced as they would under other initial disclosure
12 requirements. Defendant need not attempt to marshal all
13 documents and evidence yet, but it must produce documents that
14 it knows will be relied on at trial at this time.

15 Request for production 3, investigations, that's going
16 to be granted in part. I find certain language again to be
17 overbroad. I'm going to omit language "relate or touch upon"
18 and I'm going to omit language "in any way connected" in the
19 next line. So this request is going to read: "All documents
20 which refer to any investigation of the claims or defenses
21 asserted in the pleadings."

22 I'm overruling any state law peer-review privilege for
23 the same reasons articulated in the *Cox v. Glanz* case. If
24 defendant wants to produce a privilege log in response to this,
25 I will give defendant the opportunity to do that. But

1 otherwi se, thi s i s goi ng to be granted wi th the l imi tati ons
2 that I placed on the language.

3 MS. THOMPSON: Yes, Your Honor. The defendant has
4 previou sly responded that no responsi ve documents are
5 avai labl e.

6 THE COURT: Can you repeat that, please? I'm sorry.

7 MS. THOMPSON: The defendant, Turn Key, has
8 previou sly responded to plainti ffs that we have performed a
9 dilig ent search of our records and no responsi ve documentati on
10 i s avai labl e.

11 THE COURT: Okay. Well, that wi ll be granted and
12 you have a duty to supplement, if you fi nd any.

13 MS. THOMPSON: Yes, Your Honor.

14 THE COURT: Request No. 4, ESI , the i nci dent and
15 affi rmati ve defenses, agai n, that's going to be granted i n
16 part. It's going to be li mi ted -- thi s i s just a way the court
17 li mits some of thi s overbroad language -- but I'm just going to
18 start that phrase wi th the capi tal "Statements." I'm going to
19 el iminate the "all documents i ncluding but not li mi ted to"
20 language. I think the appropriate starting place i s statements
21 affi dav i ts, e-mai ls, text messages, and recordings, et cetera,
22 i nvol vi ng the cl ai ms or defenses asserted i n the pl eadi ngs i n
23 thi s case. I'm going to li mit the time frame to thi s to two
24 years prior to the i nci dent.

25 I find a search of the ESI to be reasonable based

1 particularly on the e-mail that's been presented by plaintiff.
2 Plaintiff has provided an example of an e-mail referencing the
3 cost of inhalers that was one month prior to Floyd's admission
4 to the jail.

5 The parties are directed to confer regarding custodians
6 and search terms. And, again, this is for only a limited
7 two-year time period prior to the incident, the ESI, or other
8 recordings or any other statements whether they're written or
9 memos. That's a two-year time frame that they have to be
10 searched.

11 I think there was some dispute in the briefing about
12 whether this extended to staffing and supervision and training
13 documents. I do not find those to be logically included in
14 this request. This particular request goes to statements and
15 communications and will be limited to that. If plaintiff wants
16 staffing and supervision and training documents, plaintiff
17 needs to ask for those by category and certainly knows how to
18 do that.

19 Any questions on request for production 4?

20 MS. THOMPSON: No, Your Honor.

21 MR. BRYAN: Nothing from plaintiff.

22 THE COURT: All right. Request for production 8;
23 this is selected employee records. That request is going to be
24 granted. I don't think it's vague or ambiguous or overly
25 broad. Plaintiff does not have to request this by specific

1 employee. Defendant must identify relevant employees from the
2 medical records and produce those employment records.

3 My understanding is there are only 19 pages of medical
4 records and Floyd was only -- I'm sorry -- Mr. Holland was only
5 there for three months so I don't think this is a vague or
6 overly burdensome request.

7 MS. THOMPSON: Your Honor --

8 THE COURT: Yes.

9 MS. THOMPSON: -- just to clarify, that defendant
10 has supplemented with the names of our employees almost two
11 years ago and has recently produced the employee files for
12 those employees to plaintiff.

13 THE COURT: Okay. Good. Then you've already
14 complied with my ruling.

15 Is there anything else that needs to be resolved on
16 that, Mr. Bryan?

17 MR. BRYAN: No, Your Honor, other than I have not
18 yet confirmed that the documents that they have produced would
19 be consistent with the order. So with that caveat, they have
20 supplemented but I have not verified it is a complete
21 supplementation.

22 THE COURT: All right. Request for production 9,
23 policies. I want to make sure I understand what Turn Key has
24 produced. I think I did see a table of contents that may have
25 been in a supplemental production, Ms. Thompson; is that

1 correct?

2 MS. THOMPSON: That is correct. And we have
3 produced a table of contents to allow plaintiff's counsel an
4 opportunity to select relevant policies and procedures that
5 they had requested to produce in their entirety. We do not
6 believe that all of the policies and procedures are relevant to
7 the facts of this case and find that many of them are not
8 relevant and are beyond the scope of discovery. Plaintiff's
9 counsel has not made arrangements or contacted with that
10 request so far.

11 THE COURT: You mean plaintiff hasn't identified any
12 of the categories listed in the table of contents and told you
13 what he wants?

14 MS. THOMPSON: Yes.

15 THE COURT: Okay. Mr. Bryan, tell me why this table
16 of contents isn't sufficient at this point.

17 MR. BRYAN: What I typically find with a table of
18 contents is while it may be a starting point, what happens is
19 these policies when you get them will start cross-referencing
20 other portions of the policy manual that have not been
21 produced, and then it just becomes a never-ending process of
22 requesting this policy that cross-references this policy and
23 you just have no idea how the entire policy manual operates
24 until you have the whole policy manual. And it's just -- it is
25 a more efficient method of production to look at the policy

1 manual because that's what's governing the facility as a whole,
2 as opposed to doing it in piecemeal fashion and then wondering
3 what other elements of this policy manual are having an impact
4 on these policies that I'm just not aware of.

5 MS. THOMPSON: Your Honor, I find plaintiff's
6 argument inconsistent with reality. There's no constant
7 cross-referencing with one policy to the other; they're
8 independent from each other. Based on the subject that they
9 addressed, each policy is clear in the title in the table of
10 contents. Such as, for example, the care of pregnant inmates,
11 that is clearly not relevant to this case and I don't see why
12 Mr. Bryan would be requesting that policy, for example.
13 There's no other manuals. The table of contents clearly
14 provides each and every policy that is contained in the manual.
15 There's no other additional manual that is cross-referenced.

16 In addition -- and I've done this with counsel in other
17 cases and I have offered this up to Mr. Bryan before --
18 somebody from a plaintiff's firm is welcome to meet with
19 counsel for Turn Key, such as myself, and review those policies
20 in person and feel like those that they need are relevant so
21 that way there's no need to go back and review anything again.
22 That could be done in one day and then we would produce the
23 relevant policies to them at that time.

24 THE COURT: Okay.

25 MS. THOMPSON: We would object to producing the

1 entire policy manual because in large part it is not relevant
2 to the facts of this case.

3 THE COURT: Ms. Thompson, has Turn Key produced the
4 entire table of contents or selected portions that Turn Key
5 believes are relevant to this case?

6 MS. THOMPSON: Turn Key has produced the entire
7 table of contents.

8 THE COURT: All right. This request for production,
9 the motion to compel is going to be denied. Turn Key has
10 produced a table of contents -- an entire table of contents and
11 I find that to be sufficient at this time.

12 Mr. Bryan, you can go through that, ask for the
13 relevant sections. If you get the relevant sections and they
14 cross-reference a section you don't have, I'm going to let you
15 go to Ms. Thompson at that point, and my guess is she's going
16 to be pretty reasonable about that given that she's given you
17 the entire table of contents.

18 My only concern in these cases is when a defendant is
19 having the opportunity to pick and choose the sections of the
20 policy that they give you the provisions for which I've seen.
21 If they're giving you the entire table of contents, I think
22 that's sufficient at this point. I think the objection is
23 well-founded that they shouldn't have to produce every
24 irrelevant section of this policy when there are going to be
25 very specific policies that are relevant to this case and most

1 of them will likely not be relevant at all.

2 So the objection that I'm sustaining is the facially
3 overbroad objection.

4 MR. BRYAN: Your Honor, can I make a comment
5 briefly?

6 THE COURT: You may.

7 MR. BRYAN: This is -- while Turn Key has tried to
8 cabin this in the context of simply the policy and procedure
9 manual, the request is not specifically limited to the policy
10 and procedure manual. Turn Key has gotten written guidance
11 that is separate and distinct from the policy manual, which
12 includes nursing protocols, which would be highly relevant to
13 how they handle Floyd Holland; in fact, probably more relevant
14 even than the policy and procedure manual. I don't have
15 anything with respect to nursing protocol or any other written
16 guidance that would be applicable to how they handle
17 chronic-care inmates, asthmatics, people that are
18 inhaler-dependent, anything like that.

19 And so limiting this to simply the policy and procedure
20 manual I think is -- it would be undeniably inclusive of the guidance
21 that is actually applicable at the facility. And so I would
22 ask that to the extent that Turn Key has other written guidance
23 that exists that would be relevant to these types of issues,
24 that they do produce a table of contents to the nursing
25 protocols or provide what other written guidance that they may

1 have that would be specific to these claims.

2 THE COURT: That's a fair argument, Mr. Bryan. I
3 may have let defendant lead me down a path of couching this
4 totally in terms of the policy because that's kind of how this
5 was briefed.

6 Ms. Thompson, do you have -- have you searched for
7 other written memos or guidelines which are certainly requested
8 in RFP 9, such as nursing protocols, that would be relevant to
9 this case?

10 MS. THOMPSON: Yes, Your Honor. With regard to the
11 nursing protocols, the nursing protocol that Mr. Bryan is
12 referring to are not policies or procedures relating to conduct
13 of Turn Key or any specific location. Nursing protocols in
14 that are guidelines for medical treatment of a particular
15 condition that's provided by a medical director. It is not the
16 same thing as an operative guideline or any policy of conduct
17 so it is not in the same category as request No. 9.

18 There are no other operative policies or procedures in
19 Turn Key except a manual, the table of contents for which has
20 been provided to plaintiff. Plaintiff has not requested
21 nursing protocols specifically or anywhere in the plaintiff's
22 requests for production. Because it is Turn Key's position
23 that this nursing protocol did not fall in the category of
24 policies and procedures. Nursing protocols are specific
25 treatments for certain conditions such as diarrhea, for

1 example, that the treatment steps can be taken by a lower
2 practice nurse, such as an LPN or an RN, without having to
3 consult with a doctor or a physician.

4 So, for example, if diarrhea is observed in an inmate,
5 then those steps that are set out in those protocols can be
6 followed and treatment administered indicated in that protocol
7 without having to consult with a treating provider, such as an
8 LPN or M.D. and those steps do not work, then follow-up with a
9 high-level provider, such as an LPN or M.D., would be made.

10 So that has to do with the treatment and care of the
11 patient, not the operative policies of Turn Key, which in Turn
12 Key's position is a different type of request which was not
13 made by Mr. Bryan --

14 THE COURT: Okay, Ms. Thompson. Let me stop you.
15 That's enough on that.

16 These nursing protocols, are they drafted by Turn Key
17 medical -- the Turn Key medical director meaning they're
18 specific to Turn Key?

19 MS. THOMPSON: Yes. They're drafted by the treating
20 provider --

21 THE COURT: Okay.

22 MS. THOMPSON: -- and --

23 THE COURT: All right. Let me ask you something
24 else.

25 MS. THOMPSON: -- there are different ones in

1 different locations, yes.

2 THE COURT: If, from your perspective, plaintiff had
3 asked for this correctly -- I understand your argument that
4 this falls outside RFP 9 -- if they had asked for it correctly,
5 are you making a relevance argument that somehow these nursing
6 protocols aren't relevant? Or would it be a similar argument
7 that you should be able to produce some sort of index or list
8 of those?

9 MS. THOMPSON: If the plaintiff directly asked for
10 the nursing protocols, I would provide -- I would provide a
11 table of contents. Because some of those, of course, would not
12 be relevant for the care and treatment provided to Mr. Floyd or
13 his alleged condition.

14 THE COURT: Okay. Mr. Bryan, I'm assuming your
15 argument is guidelines, however characterized, encompasses the
16 nurses protocols; is that correct?

17 MR. BRYAN: Yes, Your Honor. And I would just add
18 that it's fairly well-established in the Tenth Circuit that any
19 type of written guidance that is utilized in the care and
20 treatment of a particular individual is certainly sufficient to
21 establish some type of subjective knowledge, or deviations from
22 those policies would be able to establish a reasoned inference
23 of deliberate difference.

24 THE COURT: Okay. I find that -- I think I
25 previously said RFP 9 was going to be denied because I found

1 what had been currently provided sufficient. I'm going to
2 revise that ruling and say it's granted in part and denied in
3 part. It's denied in part, as I previously indicated. With
4 respect to unproduced nursing protocols that are written, I
5 find those are encompassed within request for production 9's
6 request for guidelines, however characterized, governing
7 operations from August 2017 through November 2017.

8 I'm going to require production of a table of contents
9 of those nursing protocols, I find them relevant, and I'm
10 allowing an initial production of a table of contents for the
11 same reasons that I previously articulated with respect to the
12 policies.

13 Even if I went back and made plaintiff revise this
14 request, somehow I would still reach the same result and we
15 would just be doing the same thing back here again. So I do
16 find it's encompassed and I find this to be the most efficient
17 way to get those nursing protocols produced in this case.

18 Moving on to request for production 10, which is income
19 statements and budgets for 2015 through 2018, I want to hear
20 from you, Ms. Thompson, quickly about -- I think you cited a
21 holding in the *Sanders* case by Judge McCarthy in relation to
22 Rule 30(b)(6) testimony. Do you believe Judge McCarthy ruled
23 against another plaintiff on this issue?

24 MS. THOMPSON: I'm sorry. I did not understand the
25 last portion of your question.

1 THE COURT: Did -- let me rephrase it.

2 I was trying to find -- in the *Sanders* case, I believe
3 you said Judge McCarthy reached a contrary ruling as to
4 plaintiff's position. In this case, obviously it's a different
5 case with a different lawyer. But I want to hear from you,
6 first of all, as to why that's not relevant; and second of all,
7 what you know about Judge McCarthy's ruling in the other case.

8 MS. THOMPSON: Yes, Your Honor. In the other case,
9 there were two topics that encompassed financial information,
10 such as profits, budget, and financial condition I believe was
11 the exact request in that case. And Judge McCarthy found that
12 this is relevant to the claims alleged in that case, which is
13 the same claims delivered in different in the position
14 (inaudible) same claims that more or less in this case. That
15 was not a motion to dismiss because it was dismissed at the
16 state level.

17 But regarding the 1983 identical claim, Judge McCarthy
18 found that information to be irrelevant and having no probative
19 value as to the filing of deliberate indifference of Turn Key
20 and its employees and denied those topics from consideration.

21 In my argument in response to plaintiff's motion to
22 compel, I found that only to be relevant as to the similar
23 issue in this case. Because plaintiff is seeking broadly
24 financial information which is confidential, private, and
25 proprietary information of a private corporation which is --

1 the private corporation, such as Turn Key, has a certain right
2 to privacy which is not being infringed in a nonviolent
3 fashion.

4 I do not believe that Mr. Bryan had articulated a
5 sufficient justification for infringing as to those rights to
6 privacy by blocking the request of financial information when
7 it has no probative value to the actual deliberate
8 indifference. There's no allegation that the financial
9 position or financial decision of Turn Key somehow affected the
10 care of Mr. Holland --

11 THE COURT: Isn't it relevant -- Ms. Thompson, isn't
12 it relevant to punitive damages?

13 MS. THOMPSON: Well, it could be relevant to
14 punitive damages, Your Honor. However, the punitive damages
15 stage has not been reached in this case and it may never be
16 reached. At this point their motion to dismiss -- several
17 motions to dismiss are still pending in this case and could
18 still be granted.

19 Further, Turn Key denies the allegation of the
20 plaintiff --

21 THE COURT: Sure.

22 MS. THOMPSON: -- and they may not be established
23 and we may not ever reach the punitive stage.

24 THE COURT: I understand that argument.
25 Ms. Thompson, I'm going to stop you. We just don't know -- I

1 mean, I haven't ever seen a court take a break for discovery
2 and let some more discovery be done on punitive. That usually
3 proceeds in a rapid fashion so I'm wondering how plaintiff
4 would get this information.

5 Mr. Bryan, I'm going to let you respond to the
6 arguments both as to relevance as to liability or deliberate
7 indifference and punitive.

8 MR. BRYAN: Thank you, Judge. I think it's fairly
9 straightforward in why the relevance to punitive damages. They
10 are -- the information is specifically relevant to the degree
11 of, you know, the probability of the misconduct. It is the
12 traditional punitive damages type of information.

13 THE COURT: And if I were to give it to you now, how
14 would you get it, Mr. Bryan?

15 MR. BRYAN: I -- that's a great question, Your
16 Honor. I don't know at what point we would take a break as
17 part of the litigation and try to re-engage discovery with
18 respect to punitive damages. I just don't know.

19 THE COURT: Well, you know and I know that just
20 doesn't happen. I mean, I've never seen that happen. But go
21 ahead.

22 MR. BRYAN: Yeah. And with respect to the
23 substantive issues, I would refer the court to the *Swan* case
24 and the holding in *Swan* matter that we cited in the reply brief
25 and how the *Swan* court addressed how financial information is

1 substantially relevant to all allegations where there is specific
2 evidence that would at least support an inference that there
3 was decision-making that was tailored to financial
4 considerations as opposed to medical need.

5 And in this case, we've provided the court with
6 evidence that there was considerations relevant to denying
7 inhalers because of the financial costs associated with that.
8 In addition, we've also provided evidence to the court where
9 this particular practice that we're alleging manifested itself
10 in another jurisdiction that resulted in the death of an inmate
11 prior to the time of Mr. Holland's incarceration.

12 So I think based on the rationale of the *Swan* case, in
13 addition to just the judicial efficiency and for the parties
14 with respect to discovery and punitive damages, I think the
15 information's relevant. I would add just also there's some
16 allegations related to staffing that would implicate the
17 financial records that we're seeking.

18 THE COURT: If I gave you one year of this,
19 Mr. Bryan, what would be the most important year, 2017?

20 MR. BRYAN: I would probably -- because the incident
21 in Arkansas happened, I believe, at the end of 2016, I think
22 2016 and 2017 would be the most important. But if we're only
23 doing one year, I would probably request at least the one year
24 prior.

25 THE COURT: All right. Respectfully I think there's

1 some factual issues in this case that may not have been present
2 in *Sanders* regarding whether financial considerations played a
3 role in some of the medical issues that are at issue here.
4 Again, plaintiff has submitted some evidence -- I know it's
5 just an e-mail -- but plaintiff has submitted some evidence
6 that there's discussion of how much certain things cost and
7 those certain things could have been things that made a
8 difference in the level of medical care that was provided in
9 this case. So the finances are at issue to at least some small
10 extent and perhaps more than in the *Sanders* case.

11 I also find that some of this information has to be
12 presented as relevant to punitive damages. There could be
13 later stages of the case or of discovery that this could be
14 appropriate in, but I don't think you would get through the end
15 of discovery and then wait to see whether you got a punitive
16 damages instruction and then try to get this discovery. That
17 seems like an awfully big risk for plaintiff to take and I find
18 it relevant to the proceedings.

19 I do think that the years requested are overly broad
20 and I don't know -- yeah, I think income statements and budget
21 is appropriate. I'm going to allow that for the years of 2016
22 and 2017 and it's going to be subject to the protective order.

23 Obviously, if there's specific things -- I can't
24 imagine what it would be, Ms. Thompson, but if there are any
25 specific things that you think are not relevant that need

1 redacted, I would certainly consider that redaction for privacy
2 sake, but I think most of it's probably going to be relevant
3 under my ruling. So I'm going to require production of that
4 information for 2016 and 2017 subject to, of course, a
5 protective order.

6 Are there any questions about that ruling?

7 MR. BRYAN: Nothing from the plaintiff.

8 MS. THOMPSON: Nothing from defendant.

9 THE COURT: Thank you. All right. Let's talk about
10 the request for admissions. No. 7 was not mentioned in your
11 reply brief. Is that still at issue?

12 MR. BRYAN: Yes, Your Honor.

13 THE COURT: It is. Okay. Why are you contending
14 this is vague or hard to admit or deny, Ms. Thompson? You,
15 being Turn Key, did not provide any medical care or assessment
16 of plaintiff's decedent that is not documented in the medical
17 records from the Creek County Detention Center.

18 MS. THOMPSON: It's vague whether they're referring
19 to the medical -- medical records from the Creek County
20 Detention Center. Creek County Detention Center keeps medical
21 records from prior incarcerations of inmates and other inmates
22 that are no longer incarcerated so it is vague as to what
23 specific medical records that they're referring to. We have no
24 access to the Creek County Detention Center records --

25 THE COURT: Oh, okay.

1 MS. THOMPSON: -- of the Turn Key records.

2 THE COURT: All right. Mr. Bryan, can you -- what
3 are you asking them for here to admit or deny? Do you
4 understand what she's saying?

5 MR. BRYAN: Yeah. And, I mean, all we're looking
6 for is to get some type of clarity on what the scope of the
7 encounters are, that there are encounters that are outside the
8 records. You know, they're suggesting in their prior answer to
9 the interrogatory there is not so I'm not sure --

10 THE COURT: All right. This request for admission
11 is going to be denied. I agree with Ms. Thompson and with Turn
12 Key that that last phrase "from the Creek County Detention
13 Center" makes this vague. On a request for admission, the
14 wording is extremely important and I'm not going to make them
15 answer that. I do think you have a lot more assurance than you
16 had before you started here today about the individuals
17 involved in the encounter, but the way that's worded I'm going
18 to deny it.

19 Request for admission 8, you did not discipline or
20 reprimand any employee arising from any encounter with Floyd
21 Holland, how is that ambiguous? The word "encounter," is that
22 your argument, Ms. Thompson, again?

23 MS. THOMPSON: I mean, yes, the word "encounter" is
24 vague so it is difficult to deny or admit this without knowing
25 what specifically that means.

1 THE COURT: Okay. I don't think that's vague or
2 difficult to understand. I also think that whether the
3 encounter was related to medical care or treatment or not, I
4 think that's still relevant and I think you can easily admit or
5 deny that based on the way it's worded. So the motion to
6 compel, request for admission 8, is going to be granted. The
7 word "encounter" is given its normal meaning.

8 Okay. I think that covers plaintiff's third motion to
9 compel. Anything else we need to address on docket 88 from the
10 plaintiff's perspective?

11 MR. BRYAN: Nothing, Your Honor.

12 THE COURT: Ms. Thompson?

13 MS. THOMPSON: Nothing further from defendant.

14 THE COURT: Okay. Now we're going to move to
15 plaintiff's second motion to compel which is docket 85. This
16 requests all documents produced by Turn Key in the *Sanders*
17 case, which is a case pending in this district, for medical
18 negligence resulting in death that was less than one year prior
19 to Mr. Holland's death.

20 Mr. Bryan, I want to hear from you. I don't have a
21 great sense from the briefs of exactly -- I don't need a long
22 explanation but briefly the facts of each of those cases. And
23 I know you don't represent the plaintiff in that case, but I
24 need to know what medically is at issue other than, of course,
25 deficient care and treatment but I need to know some more about

1 the facts in the *Sanders* case. And I also want to hear from
2 you on exactly when each death occurred and whether they were
3 both at the jail when the death occurred.

4 Mr. Bryan, I'm going to start with you.

5 MR. BRYAN: Sure.

6 THE COURT: So I'm trying to establish whether
7 there's -- to sustain or deny the relevance objection here.

8 MR. BRYAN: Sure. So Brenda Sanders, as the court
9 already acknowledged, happened roughly one year prior to
10 Mr. Holland's incident. Ms. Sanders, like Mr. Holland, was a
11 chronic-care inmate at the facility. Mr. Holland's medical
12 condition involved COPD. Mrs. Brenda Sanders, she -- my
13 understanding is had some type of infection and ended up going
14 septic. Both of them were housed towards the latter part of
15 their detention within the holding cells, I believe, the
16 segregation holding cells, in the booking area at the facility.
17 Turn Key was the operator in both instances. The allegations
18 in both cases involve the denial of care.

19 Mrs. Sanders, I don't know if she died at the facility
20 or died shortly thereafter at a hospital. Mr. Holland died
21 roughly 15 days later at a hospital, but I believe he was on
22 life-support measures almost from the moment that he left the
23 facility and never regained consciousness.

24 I believe the Oklahoma Medical Examiner's Office has
25 identified both deaths happened due to the policies occurring

1 at the jail, and both of them were chronic-care inmates and
2 would be subject to the same types of policies and procedures
3 and same type of operational protocols between the 2016 death
4 and the 2017 death.

5 So because both of them were subjected to basically the
6 same policies in the same location, they were both classified
7 as chronic-care inmates, and they both ended up dying because
8 of what both estates are alleging was inadequate care, we
9 believe it's at least -- our estate should be allowed to at
10 least make the argument that the Sanders death is a
11 sufficiently similar incident for purposes of establishing the
12 county's course of conduct in the *Moneil* context.

13 THE COURT: Okay. I want to talk to you about my
14 concerns about this request in this case and let you address
15 those concerns.

16 These are two ongoing -- as you know, these are both
17 ongoing cases. I believe Judge Little recently had a hearing.
18 I'm obviously conducting hearings. There's going to be
19 different relevance rulings particularly as to other incident
20 evidence, I would think. I might give you four years. She
21 might give you two years. I don't know. I haven't looked.

22 There appears to be some element that's causing me
23 concern about granting you all discovery in another proceeding
24 that's not concluded, that's not an identified universe of
25 documents, and that I don't know what has or hasn't been

1 permitted as relevant particularly in relation to my rulings.
2 I'm not saying that there's not a whole swath of documents that
3 aren't relevant. I do think there are a lot of relevant
4 documents that have been produced in that case. I'm not sure
5 if you're asking for them in a way that's appropriate given
6 that these are both ongoing cases.

7 What is your response to those concerns?

8 MR. BRYAN: Well, the way that the case is being
9 litigated obviously, you know, is going to be different because
10 there are factual differences amongst the two cases. That's
11 simply the same concern that's going to exist with every case
12 that's out there. Any similar case is going to be dissimilar
13 in some ways and similar in other ways.

14 But because that information at least has a prima facie
15 determination of relevance in the sense that Turn Key has
16 decided it was at least relevant enough to produce it
17 voluntarily in response to a request, or the court has
18 similarly found it relevant for purposes of production, for us
19 to be able to make a cogent argument about similarity we have
20 to be able to understand both the facts that are similar and
21 the facts that are dissimilar.

22 I think because there is at least an indication that
23 the documents that have been exchanged -- which is, you know,
24 obviously only the documents and have been exchanged, there's
25 at least an indication, either from the court or from Turn Key,

1 that these documents are relevant to what was going on with
2 Brenda Sanders.

3 I do appreciate the idea that there is kind of ongoing
4 litigation and so the scope of what may be relevant -- or
5 responsive, I think, to this particular request could change in
6 the future. I think to mitigate that concern we would be
7 willing to put a time limit on it as of, you know, a particular
8 date and say that documents produced up until this point, you
9 know, that have already been exchanged would be subject to this
10 particular request.

11 Then in the future, if there were other documents that
12 became available that may be relevant to this particular case,
13 then that could be something that could be revisited down the
14 road. So at least in terms of addressing the shifting
15 landscape of what is actually being ordered produced, that's, I
16 think, at least one method of trying to get our way --

17 THE COURT: Sure. What about my concern about, you
18 know, you're getting -- a plaintiff in that sense is getting
19 the best of all words if I give you a bad ruling on other
20 incidents that you don't like, maybe you get a better one in
21 the other case or you get an extra year or, you know, you get a
22 few extra lawsuits? You're just saying that's a casualty of
23 this is the most efficient way to go about requesting this
24 information from this particular defendant; is that right?

25 MR. BRYAN: That is -- yeah, I think that is one way

1 to look at it. Maybe another way to parse that is to say,
2 well, you know, to the extent that, you know, this court has
3 placed limitations as to time that may be different than in the
4 other case, that whatever limitation this court is applying
5 would be applied to whatever has been produced previously.

6 So, for example, if Judge Little had ordered the
7 production of four years but this court believes only two years
8 would be relevant based on these facts, that this court's
9 interpretation of what's relevant would control as opposed to
10 whatever Judge Little has ordered in that case.

11 **THE COURT:** Yeah. That's not workable, Mr. Bryan.
12 I mean, that's asking a whole lot of the defendant to -- for
13 purposes of a document response. So the second plan, I don't
14 think, is tenable.

15 I want to hear from -- yeah, go ahead.

16 **MR. BRYAN:** Oh, I had just one other option.

17 **THE COURT:** Sure.

18 **MR. BRYAN:** The document that Turn Key has produced
19 to the plaintiff in the *Sanders* case without, you know, an
20 order for production that Turn Key had acknowledged, yet we all
21 agree that these are relevant documents for purposes of the
22 allegation, that would be, I guess, another way to kind of
23 address this.

24 **THE COURT:** Okay. Understood. And I realize these
25 are issues that weren't precisely raised as objections. These

1 are kind of more my logistic concerns about ordering this type
2 of piggy-back discovery or clone discovery, I think is what the
3 case law calls it.

4 I'm going to turn to you now, Ms. Thompson, because I
5 know you are the attorney in that case that represents Turn
6 Key. I want to hear from you is there any major category of
7 documents that have been produced that you think are wholly
8 irrelevant here?

9 MS. THOMPSON: Yes, Your Honor. Specifically, for
10 example, confidential employee files that have been produced in
11 that case would be completely irrelevant. None of the
12 employees that are Turn Key care providers that were involved
13 in the care of Ms. Sanders were involved in the care of
14 Mr. Holland. So that would be confidential --

15 THE COURT: Sure.

16 MS. THOMPSON: -- information that has no relevance
17 and would be legally intrusive for plaintiff in this case to
18 obtain that information.

19 In addition, the concern in this case is that neither
20 the plaintiff's counsel nor the plaintiff in this case are
21 subject to the protective ruling in the *Sanders* case. So
22 anything that is produced that has been produced in that case
23 to the plaintiff in this case Turn Key cannot be guaranteed
24 confidentiality of that information. That is a serious concern
25 of Turn Key.

1 In addition, there's confidential patient information
2 that has been produced in that case and there's been no medical
3 authorizations that have been provided to plaintiff's counsel
4 or plaintiff in this case that would entitle them to the
5 production of that information.

6 I can understand where given the fact that these
7 incidents occurred in the same jail with the same medical-care
8 provider, there could be some overlap in relevant documents
9 such as maybe policies and procedures or something like that.
10 But the way plaintiff's counsel is seeking the entire file is
11 just impermissibly overbroad and a recipe for violation of
12 privacy and the violation of the protective order, and Turn Key
13 would be at risk to produce information that has absolutely no
14 relevancy to the current litigation, is outside the scope, and
15 way beyond the needs of this case.

16 Plaintiff should be required to produce -- or to
17 request specific documents that plaintiff feels are relevant to
18 this litigation that may have been produced in the *Sanders*
19 case. I think for the entire file is just extremely overbroad
20 and calls for information that is confidential and has no
21 relevance.

22 In addition, I would like to comment that the facts of
23 these two cases are not the same. It involved different
24 issues, sure. The basic allegation of 1983 violations in both
25 lawsuits is the same; however, the underlying facts are not the

1 same.

2 In this case, Mr. Holl and had passed away two weeks
3 after being transported to the hospital, and the allegation is
4 that Turn Key had failed to provide him with specific
5 medications, inhalers, which Turn Key denies, of course.

6 But in the *Sanders* case, it was a female that had an
7 underlying issue of cirrhosis of the liver which was not --
8 that information was not provided to Turn Key providers by the
9 inmate and Turn Key providers were not aware of that
10 information, which later on this inmate had collapsed and was
11 transported to the hospital in a critical condition where she
12 had died from sepsis. There's an allegation that the inmate
13 may have suffered from diarrhea which Turn Key was not aware
14 of.

15 So it's not the same information, not the same facts
16 that underlie this case and the *Sanders* case. Just the basic
17 allegation of a 1983 violation is not enough to draw a
18 correlation or any kind of relation between the two cases to
19 show that, yes, this is the same and Turn Key is doing this
20 again for the purposes of *Monell*.

21 In addition, which is important, and I agree with the
22 court's concern, that both of these cases are still in the
23 process of litigation and these violations have not been
24 established. So for the purposes of *Monell*, he's not
25 established a pattern of conduct of prior wrongdoing when prior

1 wrongdoing has not yet been established. In addition, as I
2 stated in my response to plaintiff's motion to compel, one
3 incident is not enough to establish a pattern.

4 The plaintiff is free to search public records for
5 other cases against Turn Key that may establish that pattern
6 that have already been ruled on by other judges or whatever the
7 case may be. But if the plaintiff is going to start asking for
8 the entire file like discovery in every case that Turn Key
9 has ever litigated, where is this going to end? This is a
10 different slope of dangerous proportion.

11 So these are the concerns that Turn Key has in the
12 case. If plaintiff believes that there are specific types of
13 documents that are relevant to the litigation in this case,
14 then plaintiff should identify those specific documents and
15 allow defendant to respond to the production of those specific
16 types of documents. Asking for an entire file is
17 inappropriate.

18 THE COURT: All right. Mr. Bryan, are there
19 specific categories you could identify? I'm really struggling
20 with this being overbroad and kind of the logistics of this.
21 But are they specific categories you can identify within this
22 request if you were to revise this?

23 MR. BRYAN: Yes.

24 THE COURT: You understand her concern. There's
25 going to be employee files -- and I know discovery requests

1 don't have to be perfect. I understand that. But if we're
2 getting into entire, you know, swaths of documents and
3 information that's just not relevant and that's confidential,
4 such as employee information, that is likely making your
5 request overbroad. So could you limit this to categories?

6 MR. BRYAN: We could. I would also say, though,
7 that the staffing -- one of the allegations in this case
8 specifically relates to staffing and specifically relates to
9 training. And irrespective of whether the Sanders estate ever
10 even filed a lawsuit, these documents, we would contend, would
11 be relevant to the claims here because one of the ways of
12 establishing *Moneill* liability is to show if anything was
13 happening across different individuals.

14 So, I mean, merely because there was different Turn Key
15 employees treating or handling Mr. Holland's case than handling
16 Ms. Sanders' case, that's actually a distinction that, I think,
17 tips in favor of establishing *Moneill* liability. If we can show
18 that these same problems were occurring not just with the
19 Holland employees, but also with the Sanders employees as well,
20 that's certainly an indication that there is some *Moneill*
21 considerations that are underlying what is happening to these
22 individuals.

23 THE COURT: And you're saying that would be
24 reflected in their employee files?

25 MR. BRYAN: Yes, Your Honor. That would -- those

1 employee files would identify the various training these
2 individuals had or didn't have and who was training them, the
3 policies or the protocols that were informing their
4 decision-making when they were coming to the facility.

5 I mean, one of the allegations in this case relates to
6 the contract between Turn Key and the county and that the
7 contract called for a specific number of nursing hours per week
8 that Turn Key was then not providing. And the consequence of
9 that is not merely, you know, Turn Key saving money on
10 personnel costs, but it has an impact operationally. Because
11 when you have a short-staffed facility, the nursing staff is
12 overburdened with duties, and the only thing that they can get
13 to are the daily routines such as performing sick-call requests
14 and pill-pass during their shifts. And so the chronic-care
15 inmates like Mr. Holland and like Ms. Sanders are simply left
16 to languish inside of these cells because the staffing pattern
17 prevents them -- prevents the nursing staff from actually
18 performing the duties that they needed to perform with respect
19 to chronic-care inmates.

20 And so, yeah, there are going to be, you know,
21 different records and different considerations with respect to
22 locations, but as I mentioned, it doesn't matter whether the
23 Sanders estate ever filed a lawsuit at all. The records that
24 relate to her detention, which I believe was only about 30 or
25 45 days' long, are going to be relevant to the arguments that

1 we intend to make to the court about *Monell* liability and how
2 these two individuals were treated similarly and how their
3 outcomes were similar.

4 What Turn Key is suggesting is that we don't even get
5 to make that argument, that we're not even allowed to -- you
6 know, because this is one incident, we don't, you know, even
7 get the opportunity to argue that one incident and we
8 identified another incident in Arkansas.

9 So while I appreciate some of those concerns about, you
10 know, the personnel records, you know, those individuals'
11 personnel records are going to be kept under a protective order
12 in this case, just as it is in *Sanders*, and they don't have any
13 expectation of privacy that's any different or any greater than
14 it would be in the *Sanders* case than it would be in the Holland
15 case.

16 The issue is trying to identify similarities in how
17 these -- how this staff operated at this facility and what was
18 -- you know, what was guiding their decision-making --

19 THE COURT: Okay. I appreciate your arguments,
20 Mr. Bryan. I think I've heard enough from both of you on this
21 issue. Again, I appreciate your briefing. It was helpful and
22 good.

23 I'm going to take this motion under advisement. I will
24 either do a short written order or set up another phone hearing
25 to give you a ruling on this second motion to compel. I want

1 to look at some law. Neither one of you really cited any cases
2 specific to this what I call piggy-back or clone discovery, and
3 I want to see if I can find anything in the Tenth Circuit that
4 tells the court the standard to apply or how to go about that
5 analysis.

6 I will tell you that I do think a whole lot of these
7 documents that you're asking for are going to be relevant.
8 Whether you get them in this request or whether you have to
9 draft another request that's more specific, I do think they're
10 relevant. I don't think the fact that it's only one incident
11 is going to prevent plaintiff from getting this information and
12 getting some of these documents. Obviously, one might lead to
13 two, one might be three, and this is just one piece of the
14 puzzle. In proving *Monell* liability, he doesn't have to show
15 ten of them to get this particular case.

16 But I do want to look at some of the logistics that
17 come into play with this -- with this type of a discovery
18 request, I want to make sure I understand the facts of *Sanders*,
19 and I want to look at some of the rulings in that case a little
20 more closely.

21 The issue to me is just really whether this is the
22 right way to go about getting this information. I know I did
23 already deny -- or grant -- I'm sorry -- a motion to quash
24 because we decided the third party was not the correct way to
25 go about it and so plaintiff did it this way. Now I'm deciding

1 whether this request is overbroad essentially. So with that,
2 again, expect either a short written order or another phone
3 conference to give you an oral ruling on that issue.

4 Is there anything further from the plaintiff?

5 MR. BRYAN: Nothing from the plaintiff, Your Honor.

6 THE COURT: Anything further --

7 MS. HORNE: Nothing further from defendant.

8 THE COURT: -- Ms. Thompson?

9 MS. THOMPSON: I was just going to say nothing
10 further from defendant either, Judge.

11 THE COURT: Okay. Thank you. Thank you all for
12 your arguments today. They've been very helpful. Have a great
13 day.

14 MR. BRYAN: Thank you, Judge.

15 *(The proceedings were concluded)*

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C E R T I F I C A T E

I, Brian P. Neill, a Certified Court Reporter for the Northern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this
28th day of December 2020.

s/ Brian P. Neill

*Brian P. Neill, RMR-CRR
United States Court Reporter*